

**IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH, CHANDIGARH**

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA No. 1051/CHD/2016

Assessment Year: 2009-10

Shri Jagroop Singh, C/o Shri Ranjit Singh, College Road, Near Aarjoo Hospital, VPO-Karamsar (Rara Sahib), Tehsil – Payal (Ludhiana). PAN No. : GEQPS8721L	Vs	The ITO, Ward-II, Khanna.
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ITA No. 1052/CHD/2016

Assessment Year: 2009-10

Smt. Jasbir Kaur, W/o Shri Ranjit Singh, College Road, Near Aarjoo Hospital, VPO-Karamsar (Rara Sahib), Tehsil – Payal (Ludhiana). PAN No. : DYPPK0772G	Vs	The ITO, Ward-II, Khanna.
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(Appellant)

(Respondent)

Appellant by	:	Shri Amandeep Vats
Respondent by	:	Shri S.K.Mittal, DR

Date of Hearing :	14.12.2016
Date of Pronouncement :	16.12.2016

ORDER

Both the appeals by different assessees are directed against the different orders of ld. CIT(Appeals)-2 Ludhiana dated 16.08.2016 for assessment year 2009-10, challenging the levy of penalty under section 271(1)(b) of the Income Tax Act.

2. This order shall dispose off both the above appeals filed by different assessees on common issues.

3. The facts are taken from the case of Shri Jagroop Singh, assessee. It is noted that assessment was completed

under section 144 read with Section 147 of Income Tax Act on 19.03.2015 at an income of Rs. 26,25,000/-. During the course of assessment proceedings, notice under section 148 of the Act was issued on 26.03.2014 requiring the assessee to file return of income for the assessment year under appeal and sent through registered post. There was no compliance to the notice and even no return have been filed. Therefore, notice under section 142(1) of the Act was issued on 02.05.2014 requiring the assessee to produce/file return of income. None attended on the said date. Again notice under section 142(1) of the Act was issued on 24.11.2014, 03.12.2014, 21.01.2015 asking the assessee to file/produce return of income and books of account on the given date. On these dates, neither assessee attended assessment proceedings nor any application have been sent. Once again, notice under section 142(1) of the Act was issued on 27.02.2015 and was served through affixture. The penalty proceedings under section 271(1)(b) of the Act were initiated and notice was issued for hearing on 19.03.2015, on the date fixed, none attended the penalty proceedings. Again another opportunity was provided by the Assessing Officer on 10.06.2015, 12.08.2015 and 04.09.2015. Notices also remained un-complied with. On 15.09.2015, assessee filed the reply, but Assessing Officer held that there was no reasonable cause for non-appearance and imposed penalty of Rs. 10,000/-.

4. The assessee submitted before ld. CIT(Appeals) that penalty has been imposed for non-compliance of the notices. In-fact, no notice issued under section 147/148 of the Act has been served upon assessee. All the notices issued by the Assessing Officer were sent at the address, "Ward-3, Model Town, Doraha, Ludhiana" whereas assessee was residing at "College Road, Near Aarjoo Hospital, VPO – Karamsar (Rara Sahib) Tehsil – Payal, Ludhiana". Notices were issued on the basis of AIR information. The copy of the assessment order dated 19.03.2015 was served upon assessee at the correct address of the assessee mentioned above. The assessee has filed a reply to the notice dated 04.09.2015 which fact is admitted by the Assessing Officer in the penalty order. It was, therefore, submitted that since no notice was served upon assessee, therefore, penalty need not to be imposed. The ld. CIT(Appeals), however, dismissed the appeal of the assessee.

5. The ld. counsel for the assessee reiterated the submissions made before authorities below and submitted that no notice have been served upon assessee at the correct address of the assessee. He has referred to PB-13 which is Show Cause Notice issued by Assessing Officer for levy of penalty under section 271(1)(b) of the Act dated 04.09.2015 in which the address of the assessee mentioned in the assessment order as well as correct address have been mentioned. He has submitted that this notice was served upon assessee at the correct address on which assessee filed a reply, copy of which is filed at page

15 of the Paper Book in which assessee explained that no notice was served upon assessee. Therefore, penalty is not leviable. On the other hand, ld. DR relied upon orders of the authorities below.

6. After considering rival submissions, I am of the view penalty is not leviable in the matter. The penalty under section 271(1)(b) of the Act could be levied when assessee failed to comply with the notices issued against him. The Assessing Officer in the assessment order as well as in the penalty order has mentioned the address of the assessee as "Ward No. 3, Model Town, Doraha". Many notices were issued at the assessment stage as well as at the stage of penalty proceedings but none have been served upon assessee. The Assessing Officer in the penalty order has mentioned that lastly notice was issued for 04.09.2015 and assessee's reply have been received on 15.09.2015. Copy of the notice dated 04.09.2015 is filed in the Paper Book in which the Assessing Officer has mentioned address of the assessee as "Ward No. 3, Model Town, Doraha" as well as current address is mentioned as "Now - College Road, VPO-Karamsar (Rara Sahib) Near Aarjoo Hospital Tehsil - Payal, Ludhiana". This notice is served upon assessee and assessee filed a reply before Assessing Officer, copy of which is filed at page 15 of the Paper Book in which assessee has specifically explained that no notice for assessment proceedings was ever served upon assessee. In these circumstances, it is the duty of the Assessing Officer to record factual finding in the penalty order as to whether

earlier notices sent to the assessee at different address were served upon assessee or not. In the absence of any factual finding in the impugned order, assessee is able to explain that no notices were served upon assessee at the address mentioned in assessment order as well as penalty order at Ward No. 3, Model Town, Doraha. The ld. counsel for the assessee, therefore, rightly contended that assessee is not residing at that address and when Department has located correct address of the assessee at College Road, VPO- Karamsar (Rara Sahib) Near Aarjoo Hospital Tehsil - Payal, Ludhiana" this notice was served upon assessee and was duly replied by assessee. Therefore, it stands established on record that assessee was not residing at the address where earlier notices were issued to the assessee for completion of the assessment proceedings as well as for levy of the penalty. Therefore, there was no reason for the assessee to comply with the said notices. According to Section 272B of the Act, "no penalty under section 271(1)(b) shall be imposable on the assessee for the failure referred to in the said provision, if assessee proves that there was a reasonable cause of the said failure".

7. Considering the above discussion, it is clear that assessee has been able to prove that was a reasonable cause for failure to comply with the notices because no notice was served upon assessee for completion of the assessment proceedings and for levy of the penalty. I, therefore, do not find any justification to sustain the orders of the authorities below. In this view of the matter,

I set aside the orders of authorities below and cancel the penalty.

8. In the result, appeal of the assessee is allowed.

9. The facts are same in the case of other assessee Smt. Jasbir Kaur. Following the reasons for decision in the case of Shri Jagroop Singh, I set aside the orders of authorities below and cancel the penalty.

10. In the result, this appeal of the assessee is also allowed.

11. It is clarified that finding in this order would be relevant qua the penalty matter only and shall not affect the quantum proceedings.

12. In the result, both appeals of the assessees are allowed.

Order pronounced in the Open Court.

Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated : 16th December, 2016.

'Poonam'

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT, DR

Assistant Registrar, ITAT
Chandigarh